

1 PETER O. GLAESSNER, State Bar No. 93830
 pglaeessner@aghwlaw.com
 2 LORI A. SEBRANSKY, State Bar No. 125211
 lsebransky@aghwlaw.com
 3 ALLEN, GLAESSNER, HAZELWOOD & WERTH, LLP
 180 Montgomery Street, Suite 1200
 4 San Francisco, CA 94104
 Telephone: (415) 697-2000
 5 Facsimile: (415) 813-2045

6 Attorneys for Plaintiff and Counterdefendant
 SAN FRANCISCO BAY AREA RAPID TRANSIT
 7 DISTRICT

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION

12 SAN FRANCISCO BAY AREA RAPID
 TRANSIT DISTRICT,

Case No. 4:15-cv-01313-JSW

13 Plaintiffs,
 14 v.
 15 TRAVELERS PROPERTY CASUALTY
 16 COMPANY OF AMERICA, a Connecticut
 Corporation,
 17 Defendants.

**STIPULATION AND [PROPOSED] ORDER
 TO STAY ACTION, VACATE ALL DATES
 SET IN THIS ACTION, AND HOLD A CASE
 MANAGEMENT CONFERENCE IN SIX
 MONTHS**

18 TRAVELERS PROPERTY CASUALTY
 19 COMPANY OF AMERICA, a Connecticut
 Corporation,

20 Counterclaimant and
 21 Third-Party
 Claimant,

22 v.
 23 SAN FRANCISCO BAY AREA RAPID
 TRANSIT DISTRICT; SENTINEL
 INSURANCE COMPANY LTD., a
 25 Connecticut Corporation; and DOES 1-20,
 inclusive,

26 Counterdefendant
 27 and Third-Party
 Defendants.

RECITALS

Plaintiff/counterdefendant San Francisco Bay Area Rapid Transit District (BARTD), defendant/counterclaimant/third-party claimant/counterdefendant Travelers Property Casualty Company of America, and third-party defendant/counterclaimant Sentinel Insurance Company, LTD, jointly submit this Stipulation to request that the Court temporarily stay this action, vacate all dates currently set in this action, and schedule a Case Management Conference to take place in six months. The reasons for this request and stipulation are as follows:

1. This coverage dispute arises from a fatal accident that occurred on Saturday, October 19, 2013 on the track between the Walnut Creek and Pleasant Hill BARTD stations. Christopher Sheppard, Manager of BARTD Track & Grounds, and Laurence Daniels, a contractor working for Anil Verma Associates, Inc. (“AVA”), an engineering firm that is insured by Travelers, were on the track the afternoon of October 19 when they were struck by a train and killed.

2. Mr. Daniel's heirs sued BARTD for wrongful death in a civil suit styled, *Amber Daniels, et. al. v. Bay Area Rapid Transit District*, Alameda County Superior Court No. RG14725711. Plaintiffs essentially allege that BARTD negligently failed to protect Mr. Daniels while he was working on tracks during rail car movement.

3. BARTD filed a cross-complaint against AVA in the *Daniels* action for declaratory relief, and for implied and express indemnity and contribution.

4. BARTD is an additional insured under the Travelers policy under some circumstances. BARTD tendered its defense of the *Daniels* lawsuit to Travelers under the additional insured endorsement. Travelers denied that tender. BARTD filed this insurance action to determine whether Travelers has an obligation to defend.

5. Travelers filed a third-party claim against Sentinel Insurance Company, which insured Mr. Daniels' company (Daniels Engineering). By this third-party claim, Travelers contends that should the Court find that Travelers owes BARTD a defense, that defense should be provided by Sentinel, and not by Travelers. Sentinel denies the claims asserted against it and filed a counterclaim for declaratory relief.

1 6. The parties have been working cooperatively to resolve this coverage dispute in
2 the most efficient way possible. In September 2015, BARTD and the insurers attended an initial
3 mediation session in the underlying case. Although some progress was made, the wrongful death
4 claims were not resolved. The parties to this insurance action, however, were able to discuss in
5 principle a potential settlement strategy that would encompass the BARTD's contentions
6 regarding insurers' alleged defense obligations to BARTD, and BARTD's liability claims against
7 AVA (Travelers' insured), thus resolving the claims involved in this action.

8 7. Unfortunately, settlement progress has been delayed by, *inter alia*, the wrongful
9 death plaintiffs' continued efforts to amend their pleadings to assert a survivorship claim
10 (although Mr. Daniels died instantly), which they contend increases the value of their case by
11 several million dollars. BARTD challenged the first amended wrongful death complaint by
12 demurrer. The Superior Court agreed the pleading was defective but permitted leave to amend.
13 Further complicating the matter, in the interim, one of the plaintiffs, Amber Daniels, passed away
14 unexpectedly. A second amended complaint in the wrongful death suit was filed on or about
15 April 6, 2016.

16 8. Additionally, on September 22, 2015, the personal representative of Daniels'
17 Estate filed a second lawsuit against two BARTD employees, styled *McComish v. Kappler, et.*
18 *al.*, Alameda County Superior Court No. RG15786996. BARTD also challenged that pleading by
19 demurrer. Again, the Superior Court agreed the pleading was defective but permitted leave to
20 amend. A first amended complaint in the Estate's action against the employees was filed on or
21 about April 6, 2016.

22 9. BARTD intends to challenge both amended pleadings, and must do so by May 11,
23 2016. Unfortunately, given the Superior Court's calendar, we do not expect these law and motion
24 matters to be heard until late July or perhaps early August. It will be difficult to engage in
25 productive settlement negotiations encompassing the wrongful death claims until those pleading
26 challenges are resolved.

27 10. In addition to participation in mediation in the underlying case, BARTD and the
28 insurers agreed to mediation and have had numerous telephone conferences with our appointed

1 mediator, Richard Sipos. Mr. Sipos has been a very good resource. The parties and mediator
2 agree that it makes most sense to resolve the insurance claims in conjunction with mediation of
3 the underlying wrongful death suit.

4 11. Given the delay in the underlying cases, and the parties' continued desire to work
5 toward a global resolution without incurring unnecessary litigation costs, the parties ask this
6 Court to stay this action, vacate all dates currently set in this action, and hold a case management
7 conference in six months to determine whether the stay should be lifted. The parties believe this
8 is the most efficient solution for themselves and the court.

STIPULATION

10 For these reasons, it is hereby stipulated by and between San Francisco Bay Area Rapid
11 Transit District, Travelers Property Casualty Company of America, and Sentinel Insurance
12 Company LTD, through their respective counsel of record, and subject to the Court's approval,
13 that the action be stayed to accommodate proceedings in the underlying litigation, all dates in this
14 action be vacated, and that a Case Management Conference be held in October 2016 (six months)
15 to determine whether the stay should be lifted.

16 The parties appreciate the Court's attention and consideration.

Respectfully submitted,

18 Dated: April 21, 2016

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

20
21 By: /s/ Lori A. Sebransky
22 PETER O. GLAESSNER
LORI A. SEBRANSKY
23 Attorneys for SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

24 Dated: April 21, 2016

CATES PETERSON LLP

26 By: /s/ Mark D. Peterson
27 MARK D. PETERSON
28 Attorneys for TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA

1 Dated: April 21, 2016

SMITH ELLISON

3 By: /s/ Michael W. Ellison

4 MICHAEL W. ELLISON

5 Attorneys for SENTINEL INSURANCE
COMPANY LTD.

8 **ORDER**

9
10 The parties' stipulation to stay this action and vacate all dates currently set in this action is
11 adopted. A case management conference will be held in this Courtroom on October 14, 2016 at
12 11:00 a.m. A joint case management conference statement shall be filed by October 7, 2016.

13 IT IS SO ORDERED.

14 Dated: April 21, 2016


15 JEFFREY S. WHITE
16 UNITED STATES DISTRICT JUDGE